



AN ACT TO PROTECT THE NATURAL AND HISTORIC RESOURCES OF THE COMMONWEALTH

Sponsored by: Senator Jamie Eldridge (D-Acton)

Challenge

As home of the nation's oldest public park, the Boston Common, Massachusetts has a long tradition of land conservation. Massachusetts is blessed with a rich variety of natural landscapes, from the barrier beaches and salt marshes of the Atlantic Coast, to the wetlands and meadows of the interior, all the way to the forests of the Berkshire highlands. By way of acts of the legislature as well as through generous gifts of many citizens, the Commonwealth and its municipalities have protected nearly one million acres of parklands, watershed lands, farmlands, historic and recreational areas, and wildlife habitats.

This extraordinary natural heritage is under threat from uncontrolled development. Every day, 40 acres of woods, fields, and farms in Massachusetts are lost to sprawling residential, commercial, or industrial development. Between 1972 and 1998, the developed area in Massachusetts increased by 59%, although the state's population increased by 6%. Communities faced with the need for new schools and recreational facilities, water, sewer, and utility line construction, roadway expansion, and new private development are frequently turning to land set aside for conservation or parkland as building sites—in conflict with Article 97 of the Amendments to the Massachusetts Constitution.

In 1972, Massachusetts voters approved an amendment to the state Constitution, Article 97, granting people the right to a clean environment. Article 97 requires that any land or easements taken or acquired for natural resource purposes shall not be used for other purposes unless the Massachusetts legislature approves the change by a two-thirds vote. Article 97 was intended to be a legislative 'check' to ensure that lands acquired for conservation purposes were not converted to other inconsistent uses.

Full text of Article 97 of the Amendments to the Constitution of Massachusetts

The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air, and other natural resources is hereby declared to be a public purpose.

The general court shall have the power to enact legislation necessary or expedient to protect such rights.

In the furtherance of the foregoing powers, the general court shall have the power to provide for the taking, upon payment of just compensation therefore, or for the acquisition by purchase or otherwise, of lands and easements or such other interests therein as may be deemed necessary to accomplish these purposes.

Lands and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two-thirds vote, taken by yeas and nays, of each branch of the general court.

In the absence of clear standards with the force of law, Article 97 votes have become routine legislative business, with nearly every land transfer proposal brought up for a vote approved unanimously. Most legislators feel compelled to vote in the affirmative out of reciprocity—they will need their colleague's support for their own district's land transfer petition in the future. Roll call votes on land transfers have constituted over twenty percent of all roll call votes taken in the legislature in the past several years.

Solution

This legislation, also known as the **PUBLIC LANDS PROTECTION ACT (PLPA)**, declares that it is the policy of the Commonwealth that there should be *no-net loss* of lands or easements protected under Article 97. The bill establishes the statutory framework, pursuant to the constitution, to guide legislators' decisions on whether to approve bills that would transfer state- or municipal-owned Article 97 lands or easements to a new but inconsistent public use, to a different public management authority, or from public to private ownership; all dispositions and changes in use of lands or easements taken or acquired for natural resource purposes must be appropriately mitigated to ensure that the disposition or change in use does not result in a net loss of lands and easements;

Legislation to allow a disposition or change of use of Article 97 lands will not be considered unless the owner of the lands or easements provides the General Court with the following 6 items:

- A statement from the Secretary of Energy and Environmental Affairs as to whether the land or easement is classified as article 97 land
- A metes and bounds description of the lands or easements, a copy of the deed into the present owners and a statement of the market value of the lands or easements through an appraisal and prepared by a state certified appraiser or state licensed appraiser,
- Approvals by the governing body or officer of the owner approving disposition or change in use of the subject land and acquisition of replacement land, preceded, if applicable, by the approval of the conservation commission.
- An alternatives analysis approved by the Secretary of Energy and Environmental Affairs
- A signed offer, signed purchase and sale agreement, fully executed lease, deed or other legal documents for the replacement land, a metes and bounds description of the replacement land and a statement of the market value of the lands through an appraisal and prepared by a state certified appraiser or state licensed appraiser
- A letter from the Secretary of Energy and Environmental Affairs approving the replacement land

The Secretary of Energy and Environmental Affairs will help set up guidelines for conducting an alternatives analysis and identifying replacement land. Additionally, at the end of each legislative session, the joint committee on bonding, capital expenditures and state assets is to file a report detailing their activities on all bills referred to them that involve dispositions or changes in use of lands or easements taken or acquired for natural resources purposes.

Benefits

This legislation preserves taxpayers' investments to provide a conservation legacy for future generations. The assets of any trust should be managed for the benefit of its beneficiaries. Once the Commonwealth or a municipality makes an investment of taxpayers' money in open space, that investment should be maintained for the purpose it was originally acquired.

Article 97 of the Amendments of the Constitution should serve to establish an interconnected system of natural areas and open spaces that are protected and managed for the ecological benefits they provide people and the environment. While traditional capital projects have fixed lives and depreciate over time, capital dollars spent on land conservation appreciate and pay economic dividends in perpetuity. Protected land is a form of 'green' infrastructure, providing 'free' ecological services, such as water purification and flood control, to the taxpayers. Protected land helps channel growth away from sensitive areas toward more appropriate sites that can better accommodate development.

Watershed lands filter contaminants, reducing the need for expensive water treatment plants. Urban parks provide solace from the congestion of cities. Agricultural lands produce fresh local food. Wildlife habitats preserve biological diversity. Outdoor recreation, tourism, agriculture, and forestry generate tax revenue and jobs in Massachusetts. Quality of life consistently ranks near the top of relocation criteria considered by high-tech, research & development labs and other emerging technology facilities that place great emphasis on attracting and retaining skilled labor.

When a community's most treasured places are preserved, so too are its history and character. We must not allow short-term demands to sacrifice this legacy. Protected lands should be the last alternative to public or private development, not the first option.

For more information about this bill, contact Jennifer Ryan, Mass Audubon's Legislative Director, at 617-523-8448 or jryan@massaudubon.org. February 2009.